



## Development of A New Rule Concerning Combined Sewer Overflow Public Notification

#00-136(WPCB)

### Overview

The Indiana Department of Environmental Management (IDEM) has developed a draft rule in response to Public Law 140-2000, SECTION 23, enacted by the General Assembly in July 2000, concerning community notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs). This draft rule is to be presented to the Water Pollution Control Board (board) on April 10, 2002, for consideration of preliminary adoption. One (1) comment letter was received during the first notice of public comment, and six (6) comment letters were received during the second notice of public comment. Additionally, since Rule 5 of Title 327 was opened for the CSO Public Notification rulemaking, amendments were made to 327 IAC 5-2-9 to correct a citation in the section and to reformat it according to the manner currently used in state rule writing.

### Citations Affected

This rulemaking amends: 327 IAC 5-2-9 and adds 327 IAC 5-2.1.

### Affected Persons

This rule will affect communities that are National Pollutant Discharge Elimination System (NPDES) permit holders and have combined sewer overflows.

### Reason(s) for the Rule

This rulemaking is being initiated pursuant to P.L.140-2000, SECTION 23, which requires the Water Pollution Control Board to adopt a rule to establish requirements for community notification by NPDES permit holders of the potential health impacts of CSOs whenever information from a reliable source indicates that a discharge is occurring or there is a reasonable likelihood that a discharge will occur within the next twenty-four (24) hours.

### Economic Impact of the Rule

The economic impact of this rule will be dependent upon the number of combined sewer overflow outfalls in a community and the number of times per year the CSO outfalls discharge. The cost will also be dependent on the length of river impacted by a CSO discharge. However, the notice requirement is consistent with existing federal requirements for CSO communities to provide public notification of CSO occurrences and impacts; therefore, IDEM believes the economic impact of this rule will not be significant.

### Benefits of the Rule

This rule is intended to safeguard the public's health and give warning to persons who likely may come into contact with waterbodies contacted by combined sewer overflow.

### Description of the Rulemaking Project

A rulemaking workgroup was formed and workgroup meetings were held beginning in the summer of 2001. The workgroup was comprised of representatives of CSO communities, Indiana Association of Cities and Towns, Hoosier Environmental Council, and Improving Kids' Environment, the organization that was wholly instrumental in the passage by the 2000 General Assembly of the requirement for this rulemaking. Several workgroup meetings were held to discuss various draft versions of the rule in order to achieve a consensus on a draft rule that meets the legislative requirements and provides protective notification to the public without being unreasonably burdensome on the affected CSO communities.

### Scheduled Hearings

First Public Hearing: April 10, 2002, at the WPCB meeting held at the Indiana Government Building

South.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

This new rule is strictly of state origin though it has ties to federally required rulemakings concerning control and elimination of combined sewer overflows

and the long term control plans required to guide communities toward achieving those goals.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses to comments from the first comment period, a notice of first meeting/hearing, and the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the draft rule as preliminarily adopted, is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Secretary of State.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635, Reggie Baker, Urban Wet Weather Section, Office of Water Quality, (317) 233-0473, or (800) 451-6027 (in Indiana).